

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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PETER CORINES,

Petitioner,

-against-

WARDEN, Otisville Federal Correctional Inst.,

Respondant.

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NICHOLAS G. GARAUFIS, United States District Judge.

MEMORANDUM & ORDER

05-CV-2056 (NGG) (SG)

On May 18, 2006, I referred this case to Judge Gold for a Report and Recommendation (“R&R”) on the habeas corpus petition. (Docket Entry #25.) Petitioner has now twice filed motions for Judge Gold to issue a stay permitting him to present certain unexhausted claims in state court (see Docket Entries #32 and #30 at 13-16), and twice Judge Gold has denied Petitioner’s motions. By letter filed on February 13, 2007, Petitioner requested that I review Judge Gold’s January 29, 2007 Order denying the stay. (Docket Entry #43.) I have reviewed the Judge Gold’s Order, and hold that a stay is not warranted at this time.

The Supreme Court has held that it is an abuse of discretion to grant a habeas petitioner a stay “when his unexhausted claims are plainly meritless.” Rhines v. Weber, 125 S. Ct. 1528, 1535 (2005). As Judge Gold held in his January 29, 2007 Order, “[a]t this stage of its review of Corines’ petition, it is the court’s view that petitioner’s [unexhausted] claims are plainly meritless. If, as the court’s review of the petition continues, I conclude that there are unexhausted claims that are not plainly meritless, I will so advise the parties and reconsider whether a stay should be granted.” (Docket Entry #42.) I agree with Judge Gold’s assessment

about Petitioner's unexhausted claims and, at this stage in the litigation, decline to overrule his denial of a stay.

Furthermore, Petitioner has filed a motion for summary judgment, which is generally disfavored in habeas corpus proceedings. See Whitaker v. Meachum, 123 F.3d 714, 715 n.2 (2d Cir. 1997; Mitchell v. Goord, 2005 U.S. Dist. LEXIS 4772, *7-11 (N.D.N.Y. March 21, 2005). Judge Gold shall consider Petitioner's motion for summary judgment when he issues his R&R.

SO ORDERED.

Dated: August 23, 2007
Brooklyn, N.Y.

/signed/

NICHOLAS G. GARAUFIS
United States District Judge